



Pennsylvania's **STATE SYSTEM** of Higher Education

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WRITTEN DECISIONS TRAINING 2021

PRESENTERS:

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LAYOUT OF TRAINING

- Summary of Work Done by Work Group
- Presentation of Template
- Explanation of What Needs to be Included and How to Include it
- Presentation of Sample Case Summary Form
- Practical Training- turn the Summary Form into Written Decision using Template
- Share final Written Decision of Sample Case
- Questions?



WORKING GROUP

- Met to determine how training would roll out
- Compared All Regulatory Needs (Title IX, Model Policy, PA Regulations)
- Determined Templates were crucial
- Consulted SCI Templates
- Built Cover Letter to begin written decision process
- Set to work building Written Decision Template to meet Regulatory Needs



DECISION AUTHORITIES

- Title IX Regulations
- PASSHE Model Sexual Misconduct Policy
- Pennsylvania Regulations



TEMPLATE FOR WRITTEN DECISIONS

1. Notification of Conduct Hearing Outcome:
Respondent
2. Notification of Conduct Hearing Outcome:
Complainant
3. University Board Decision (attached to both)



1. Notification Of Hearing Outcome: Respondent

- Introduction
- Outcome
- Appeal Process (**in bold**)
- Reference Attached Board Decision Letter



2. Notification Of Hearing Outcome: Complainant

- Introduction
- Outcome
- Appeal Process (**in bold**)
- Reference Attached Board Decision Letter



3. University Board Decision

- Introduction
- Formal Complaint
- Timeline of Procedural Steps Taken & Evidence Reviewed
- Extensions (if relevant)
- Live Hearing
- Standard of Proof
- Findings and Rationale
- Sanctions
- Conclusion
- Board Affirmation with Signatures



LETTERS



Letters to Respondent and Complainant

- **Introduction**
 - Slightly different opening for each letter
 - Hearing date
 - Incident date/time/location



Letters

BRIEF Outcome

- Alleged Violations
- Detail Violations per Date
- Detailed statement of findings attached

BRIEF Sanctions

- If assigned
- Specific terms and conditions are detailed
- How to submit is not necessary for Complainant



Letters

Appeal

- Very Clear
- Highlighted to encourage full understanding of timeline and rights
- Grounds for the Appeal

Retaliation Notice

Appeal

Please note that all parties, you and the Complainant, identified in this case, have the right to file an appeal. We urge you to read this decision fully and then consider if you would like to appeal that decision as described in the paragraph immediately below. The board decision will be the final outcome in the process if neither party files an appeal by the deadline indicated.



Appeal Grounds

- A procedural irregularity ...
- New evidence that was not reasonably available ...
- The Title IX Coordinator, Investigator(s), or Decision Maker(s) had a conflict of interest or bias...
- The Disciplinary Sanction imposed was grossly disproportionate to the violation(s). Then, appealing on this basis, the other Party will be given 5 days to respond to the appeal after being notified.



Appeal based on:

Procedural irregularity

- (1) denied [decision upheld],
- (2) repair the procedural error and reconsider,
or
- (3) remand for a new hearing with a new
decision maker—least desirable option



Appeal based on:

New evidence

- (1) denied [decision upheld],
- (2) remanded to original fact-finder for limited purpose of considering the omitted evidence, or
- (3) remand for a new hearing if the original decision makers cannot be reconvened



Appeal based on:

Conflict of interest or bias

- (1) denied [decision upheld] or
- (2) remanded for a new hearing with a new decision maker and replacement for any other individual involved in the process for whom a conflict or bias existed



Appeal based on:

- Arbitrary or capricious sanction or appropriateness of the sanction
- (1) denied [decision upheld] or
- (2) follow university specific process for revising a sanction

Appeal: Emergency Removal

If sanctions were imposed, they go into effect immediately unless an appeal is filed. Upon receipt of a written appeal, the {Appropriate Office} will share the appeal with all parties and defer the imposition of the sanction(s). **For this case, an emergency removal remains in effect, pending the decision on the appeal.** The Appellate Officer(s) shall have the authority to: 1) Uphold the decision, 2) Modify the sanction 2) Remand back to the original board, or 3) Grant a new hearing.

Appeal: Options

If sanctions were imposed, they go into effect immediately unless an appeal is filed. Upon receipt of a written appeal, the {Appropriate Office} will share the appeal with all parties and defer the imposition of the sanction(s). For this case, *an emergency removal remains in effect, pending the decision on the appeal*. The Appellate Officer(s) shall have the authority to: 1) Uphold the decision, 2) Modify the sanction 2) Remand back to the original board, or 3) Grant a new hearing.



Appeal Outcomes

- Must notify the other party in writing when an appeal is filed and share appeal
- Implement appeal procedures equally
- Issue a written decision describing the result of the appeal and the rationale for the result
- Provide to both parties simultaneously



3. UNIVERSITY BOARD DECISION



3. University Board Decision

- Introduction
- Formal Complaint
- Timeline of Procedural Steps Taken & Evidence Reviewed
- Delays (if relevant)
- Live Hearing
- Standard of Proof
- Findings and Rationale
- Sanctions
- Conclusion
- Board Affirmation with Signatures

Introduction

This University Hearing Board, serving as decision makers in this case, held a formal hearing on **HEARING_DATE** in response to allegations of misconduct brought by **Name of Complainant(s)** for allegedly violating the Sexual Misconduct Policy as incorporated into the University Policy Name on **INCIDENT_DATE** at **INCIDENT_LOCATION**. Include brief **INCIDENT_SUMMARY**.



Formal Complaint

- Date filed by Complainant
- Date the Respondent was given notice
- Allegations
- Reference to Final Rule

Formal Complaint

On September 23, 2020, a formal complaint was filed by Willow Smith (Complainant) against Blake Morgan (Respondent) alleging the following violations of the Sexual Misconduct Policy as incorporated into the Student Code of Conduct:



Formal Complaint

Alleged Violations for September 19, 2020 Incident

- Non-Regulatory Sexual Penetration Without Consent for Oral Sex:** Any penetration of the mouth, sex organs, or anus of another person, however slight by an object or any part of the body, when consent is not present. This includes performing oral sex on another person when Consent is not present.

- Non-Regulatory Sexual Penetration Without Consent with Sexual Intercourse:** Any penetration of the mouth, sex organs, or anus of another person, however slight by an object or any part of the body, when consent is not present. This includes performing oral sex on another person when Consent is not present.

Alleged Violations for September 21 and September 22, 2020 Incidents

- Regulatory Stalking:** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the

Formal Complaint

In accordance with the Title IX Grievance Policy, the Title IX Coordinator emailed the Respondent a written Notice of Allegations on September 26, 2020. The Title IX Grievance Process is developed and enforced according to the Institution's obligations under the U.S. Department of Education's Final Title IX Rule of May 19, 2020 (you may view the Final Rule at <http://bit.ly/TitleIXReg>).



Timeline of Procedural Steps Taken and Evidence Reviewed

List all:

- 1) Notification to the parties
- 2) Interviews (all dates/ times/locations) with parties
- 3) Interviews (all dates/ times/locations) with Witnesses
- 4) Site visits
- 5) Methods used to gather other evidence
- 6) Documents and Descriptions of Evidence



Extensions

Complainant/Respondent requested an extension of ___ days to _____. Title of Official granted/denied the delay.



Live Hearing

A live hearing on the formal complaint was held on HEARING_DATE before a University Hearing Board. At the hearing, you shared that you did/did not violate _____.



Live Hearing

Provide Notice of Training

In compliance with section 106.45 of the Title IX Final Rules, Your University provides to all parties all materials used to train Title IX Coordinators, investigators, hearing officers, and any person who facilitates an informal resolution process on the University Website in the Office of Student Conduct and additional materials in the Office for Diversity, Equity, and Inclusion website.

Live Hearing

Conflicts of Interest

The parties were afforded the opportunity to raise objections to the Board concerning material conflicts of interest or bias, and none/an accusation of bias was/were identified and reviewed; the determination was that there was/was not bias and the decision maker was/was not replaced by another decision maker.



Live Hearing

Details

- 1) Who was present,
- 2) Who testified and how,
- 3) Did anyone decline cross examination
- 4) Were any issues ruled irrelevant and why



Live Hearing

Details

If applicable: Indicate any issues arising from decorum and their resolution, if any.

*“The parties, advisors, and witnesses were subject to rules of decorum, and these individuals **did/did not** follow these rules in the University Hearing Board Chair’s judgment.”*



Standard of Proof

Consistent with the Student Personnel requirements for the Pennsylvania State System of Higher Education set forth in Pennsylvania Code, the University will use the preponderance of the evidence standard in investigations of formal complaints alleging sexual misconduct violations under the University's Sexual Misconduct Policy. This means that the Decision Maker(s) must determine whether it is more likely than not that a violation of the Policy occurred.



10 Minute BREAK



Findings and Rational

- Consent if relevant
- Charge, Finding
 - Facts
- Application of Facts to Violation
- Finding restated

Findings and Rationale

Consent

- Where of the alleged violations in this matter involved the issue of consent, the critical issue is determining whether the Complainant provided and/or was capable of providing consent to the sexual acts which both parties agree occurred. The definition of consent that applies in this case is as follows:
- Add policy definition of consent



Findings and Rationale

Charge, Finding (list each separately)

- Bulleted form
- List of undisputed and disputed facts
- Not overly legalistic



Findings and Rationale

Why did you decide what you did?

- Facts list oriented to the timeline
- Include undisputed facts
- Share how the disputed facts are resolved
- Clearly identify any relevant information added or articulated in the hearing that was not in the investigative report
- Further identify that it was noted in hearing testimony. “During the hearing...”



Allegation Elements

- Element 1: a course of conduct
- Element 2: toward another person
- Element 3: that demonstrates or communicates an intent to place the other person in reasonable fear of bodily injury or to cause substantial emotional distress to the other person

Findings and Rationale

Apply the Facts to the Violation

The Complainant's continuation of performing oral sex demonstrated a knowing and voluntary agreement to engage in oral sex at the time of the activity. Although alcohol was involved at this time and the Complainant did show signs of intoxication, the Complainant did not show signs of incapacitation, defined as a state beyond drunkenness or intoxication.

Findings and Rationale

Final Finding Restate

*Therefore, the Respondent is FINDING
for CHARGE_1.*



Sanctions and Conditions

- List specific actions
- Best practice if student has learning outcome desired
- Date range or due date
- Where to send verification

Conclusion

- Summarize the overall facts, demeanor, admittance
- How the sanctions address the violations
- Include relevance
- Include whether the remedies designed were to restore or preserve equal access to the university's education program or activity will be provided by the university to the complainant



Board Affirmation with Signatures

- Board must affirm this document
- Must develop process to affirm if you are putting the document together
- Can be via email



QUESTIONS????